



(4310-4J-P)

## **DEPARTMENT OF THE INTERIOR**

### **Bureau of Indian Affairs**

#### **Poarch Band of Creek Indians — Alcohol Beverage Control Ordinance**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

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**SUMMARY:** This notice publishes the Amendment to the Poarch Band of Creek Indians – Alcohol Beverage Control Ordinance. This Ordinance regulates and controls the possession, sale and consumption of liquor within the Poarch Band of Creek Indians’ Indian country. This Ordinance allows for the possession and sale of alcoholic beverages within the jurisdiction of the Poarch Band of Creek Indians, will increase the ability of the tribal government to control the liquor distribution and possession of liquor within their Indian country, and at the same time, will provide an important source of revenue, the strengthening of the tribal government and the delivery of tribal services.

**DATES:** *Effective Date:* This Amendment is effective 30 days after publication [Insert date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Chanda Joseph, Tribal Relations Specialist, Eastern Regional Office, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214, Telephone: (615) 564-6750; Fax: (615) 564-6701; or, De Springer, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street, N.W., MS-4513-MIB, Washington, DC 20240; Telephone: (202) 513-7626.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within the Poarch Band of Creek Indians’ Indian country. On January 19, 2012, the Tribal Council of the Poarch Band of Creek Indians duly adopted Tribal Council Ordinance TCO 2012-001, amending the Poarch Band of Creek Indians Alcoholic Beverage Control Ordinance and the Criminal Code.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Tribal Council of the Poarch Band of Creek Indians duly adopted Tribal Council Ordinance TCO 2012-001 on January 19, 2012.

Dated: June 25, 2012

Donald E. Laverdure  
Acting Assistant Secretary – Indian Affairs

The Poarch Band of Creek Indians – Alcoholic Beverage Control Ordinance, as amended, shall read as follows:

## **CHAPTER I - GENERAL PROVISIONS**

**§ 40-1-1      Title**

This section of Poarch Band of Creek Indians Tribal Code shall be known as the “Alcoholic Beverage Control Ordinance”.

**§ 40-1-2 Authority and Purpose**

This Ordinance is adopted pursuant to the sovereign authority of the Poarch Band of Creek Indians and Article IV, Section 4(k), (m), (n) of the Constitution of the Poarch Band of Creek Indians and the Act of August 15, 1953, Public Law 83-277, 18 U.S.C. 1161. The introduction, possession, transportation, and sale of alcoholic beverages shall be lawful within the Indian country under the jurisdiction of the Tribe, provided that such introduction, possession, transportation, and sale are in conformity with the provisions of this Ordinance and the laws of the State of Alabama pursuant to 18 U.S. C. §1161.

**§ 40-1-3 Definitions**

As used in this Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) “Alcoholic Beverages” means any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquor, a part of which is spirituous, vinous, fermented or otherwise alcoholic, and all drinks or drinkable liquids, preparations or mixtures intended for beverage purposes, which contain one-half of one percent or more of alcohol by volume, and shall include liquor, Beer, and wine, both fortified and table wine.

(b) “Applicant” means any individual, entity, or enterprise seeking to sell or serve Alcoholic Beverages within Indian Country under the jurisdiction of the Tribe by submitting an application for a license or permit.

(c) “Indian Country” means land under the jurisdiction of an Indian tribe as defined by 18 U.S.C. § 1151.

(d) “Minor” means any person under age twenty-one (21) years of age.

(e) “Tribe” or “Tribal” means the Poarch Band of Creek Indians.

(f) “Tribal Council” means the duly elected governing body of the Poarch Band of Creek Indians.

(g) “Ordinance” means Poarch Band of Creek Indians Alcoholic Beverage Control Ordinance.

#### **§ 40-1-4 Sovereign Immunity**

Nothing contained in this Ordinance is intended to nor does in any way limit, alter, restrict, or waive the Tribe’s sovereign immunity.

#### **§ 40-1-5 Severability**

If any clause, sentence, paragraph, section, or part of this Ordinance shall, for any reason be adjudicated by any court of competent jurisdiction, to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgment shall have been rendered.

#### **§ 40-1-6 Prior Inconsistent Law**

Upon the effective date of this Ordinance, any prior, inconsistent resolutions, policies, ordinances and/or procedures of the tribal government and tribal enterprises are hereby superseded and/or amended to comply with this Ordinance.

#### **§ 40-1-7 Effective Date**

This Ordinance may be amended in accordance with the Tribal Constitution. All amendments shall be subject to the final approval of the Secretary of the Interior before they become effective. This Ordinance shall be deemed effective January 1, 2012 or upon approval by the Secretary of the Interior or whichever is later.

## **CHAPTER II - ADMINISTRATION**

### **§ 40-2-1 Delegation of Authority**

The Tribal Council authorizes the Public Safety Department to oversee and enforce this Ordinance.

### **§ 40-2-2 Primary Functions of Public Safety Department**

The Public Safety Department shall have the authority and responsibility to:

- (a) Administer and enforce all provisions of this Ordinance;
- (b) Deny issue, or restrict alcoholic beverage control renewal licenses and permits to any Applicant that operates within the Indian Country under the jurisdiction of the Tribe;
- (c) Revoke or suspend alcoholic beverage control licenses or permits of any licensee or permittee that operates within the Indian Country under the jurisdiction of the Tribe after notice and an opportunity to be heard has been provided to licensee or permittee;
- (d) Maintain a current list of licensees and permittees for purposes of ensuring compliance with tribal and state license laws;
- (e) Monitor licensee's compliance with this Ordinance and any conditions placed on any license or permit issued pursuant to the Ordinance;
- (f) Ensure licensees are conducting employee TIPS training for new hires and as a part of ongoing employment;

(g) Establish forms and internal policies and procedures necessary to carry out the purposes of this Ordinance;

(h) Promulgate and enforce written rules and regulations not inconsistent with this Ordinance;

(i) Investigate any reports of a violation of this Ordinance and, if applicable, coordinate investigations and prosecutions with other law enforcement agencies;

(j) Impose civil sanctions and penalties in accordance with this Ordinance; and

(k) Submit any reports requested by Tribal Council regarding any aspect of the administration or enforcement of this Ordinance.

#### **§ 40-2-3 Rules and Regulations**

(a) Rules and regulations that the Public Safety Department deems necessary to administer its responsibilities under this Ordinance shall be promulgated only upon thirty (30) days' notice of the proposed rulemaking action, which shall be provided to the Tribal Council and posted at the tribal offices.

(b) The notice shall specify the purpose of the proposed regulation, the draft language of the proposed regulation, the factors the Public Safety Department has considered in its determination to enact the proposed regulation, and the Public Safety Office's address at which the Public Safety Department shall receive comments.

(c) During the notice period, the Public Safety Department shall receive comments regarding the proposed regulation at the designated mailing address.

(d) The comments received by the Public Safety Department shall be considered by the Public Safety Department at a public meeting, and the Public Safety Department shall make a final determination regarding the need for the proposed regulation on the basis of all the

information available. All final determinations of the Public Safety Department shall be recorded in writing.

(e) Any final rules and regulations shall be provided to the Tribal Council. No later than thirty (30) days after the final determination of the Public Safety Department, the Tribal Council may veto the final rules or regulations or a portion thereof. A veto requires a 2/3 vote of the total membership of the Tribal Council. All members of the Tribal Council do not need to be present. Regulations will not be effective until the date the veto period expires or the date that the Tribal Council exercises its right to veto, whichever date is earlier. If the Tribal Council vetoes any clause, sentence, paragraph, section, or part of the final rules and regulations, then the Tribal Council shall clarify which, if any, provisions shall become effective at the time that it exercises its right to veto.

### **CHAPTER III – REQUIREMENTS AND CONDITIONS**

#### **§ 40-3-1 License or Permit Required**

No person shall engage in the sale of any alcoholic beverage within the Indian Country under the jurisdiction of the Tribe, unless duly licensed or permitted to do so by the State of Alabama and the Tribe in accordance with the terms of the Ordinance. A separate license or permit shall be required for each location where Alcoholic Beverages are to be sold or served.

#### **§ 40-3-2 Privilege and Duties**

(a) Notwithstanding any other provision of this Ordinance, a tribal alcoholic beverage license or permit is a mere permit for a fixed duration of time. A tribal alcoholic beverage license or permit is a revocable privilege and shall not be deemed a property right or vested right of any kind nor shall the granting of a tribal alcoholic beverage license or permit give rise to a

presumption or legal entitlement to the granting of such license or permit for a subsequent time period.

(b) Applicants and licensees shall have a continuing duty to provide any materials, assistance or other information required by the Public Safety Department and to fully cooperate in any investigation conducted by or on behalf of the Public Safety Department. If any information provided on the application changes or becomes inaccurate in any way, the Applicant or licensee shall promptly notify the Commission of such changes or inaccuracies.

(c) Acceptance of a license by the licensee constitutes an agreement on the part of the licensee to be bound by the provisions of this Ordinance, applicable laws, and applicable rules and regulations as they are now, or as they may hereafter be amended or restated, and to cooperate fully with the Public Safety Department.

(d) It is the responsibility of the licensee to remain informed of the contents of this Ordinance and all other applicable laws, rules, regulations, amendments, provisions, and conditions, and ignorance thereof will not excuse violations.

#### **§ 40-3-3 Assignment or Transfer**

No tribal license or permit issued under this Ordinance shall be assigned or transferred without the written approval of the delegated authority as expressed by formal resolution and upon satisfaction of the conditions required for a license or permit as set out in § 40-3-4 of this Ordinance.

#### **§ 40-3-4 Conditions of the Tribal License or Tribal Permit**

Any Tribal license or permit issued under this Ordinance shall be subject to such reasonable conditions as the Public Safety Department shall determine, including, but not limited to the following:



(a) The licensee or permittee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.

(b) The licensee or permittee shall be subject to patrol by the Public Safety Department, and such other law enforcement officials as may be authorized under Tribal or federal law.

(c) The licensee or permittee shall be open to inspection by duly authorized Tribal officials at all times during the regular business hours.

(d) The licensee or permittee shall not sell Alcoholic Beverages within 200 feet of a polling place on tribal election days and including on special days of observance as designated by the Tribal Council.

(e) The licensee or permittee shall perform all acts and transactions under authority of the Tribal alcoholic beverage license or permit in conformity with this Ordinance and the terms of the Tribal license or permit.

(f) The licensee or permittee shall sell Alcoholic Beverages only for the personal use and consumption of the purchaser. Resale of any alcoholic beverage is prohibited.

(g) The licensee or permittee shall not sell, serve, deliver, or give any person under the age of 21 Alcoholic Beverages in the licensed establishment or at a permitted event. A licensee or permittee shall not allow any person under the age of 21 to consume Alcoholic Beverages in the licensed establishment or permitted event. Where there may be a question of a person's right to purchase an Alcoholic Beverage by reason of his or her age, such person shall be required to present any one of the following cards of identification which shows his or her correct age and bears his or her signature and photograph:

(1) A driver's license of any state or identification card issued by any state department of motor vehicles;

(2) United States active duty military ID;

(3) A passport; or

(4) A Poarch Creek tribal identification card or other recognized tribal identification card.

#### **§ 40-3-5 License Term**

A license shall be for a term of one year. License renewals are required each year.

#### **§ 40-3-6 Permit Term**

A permit shall be for a term of no more than three (3) days.

### **CHAPTER IV – LICENSE AND PERMIT PROCESS**

#### **§ 40-4-1 Initial License**

(a) Application

An Applicant shall file an application for an initial alcoholic beverage license with the Public Safety Department. The initial application shall include, but not be limited to, the following information:

(1) The name and address of the Applicant;

(2) The description of the premises in which the Alcoholic Beverages are to be sold;

(3) Certification that the Applicant's establishment is not located closer than 500 feet from any church or school;

(4) Evidence that the Applicant is or will be duly licensed by the State of Alabama;

(5) Agreement by the Applicant to accept and abide by all conditions of the tribal license; and

(6) Agreement by the Applicant to:

(i) Post notice in a prominent, noticeable place on the premises where Alcoholic Beverages are to be sold for at least 30 days prior to consideration by Tribal Council for licensure, and

(ii) Publish notice at least twice in a local newspaper serving the community that may be affected by the license.

The notices shall state the date, time and place when the application shall be considered by the Tribal Council.

(b) Public Hearing

(1) If a complete application and all required documentation are received, the Public Safety Department shall schedule a public hearing before the Tribal Council.

(2) The Applicant shall provide notice of the public hearing by:

(i) Posting notice in a prominent, noticeable place on the premises where Alcoholic Beverages are to be sold for at least 30 days prior to consideration by Tribal Council, and

(ii) Publishing notice at least twice in a local newspaper serving the community that may be affected by the license.

The public hearing notice shall state the date, time, and place when the application shall be considered by the Tribal Council.

(3) The Applicant and any person(s) supporting or opposing the application shall have the right to be present and to offer sworn oral or documentary evidence relevant to the application.

(c) Disposition of Application

After the hearing, the Tribal Council shall determine whether to grant or deny the application, based on whether the Council, in its discretion, determines that granting the license is in the best interests of the Tribe. The decision of the Tribal Council shall be final and not subject to appeal.

**§ 40-4-2      Renewal License**

Application

Renewals applications shall be submitted each year no later than sixty (60) days prior to the expiration of the current license. The renewal application shall include, but not be limited to, the following information:

- (1) Name and address of the Applicant;
- (2) Description of the premises in which the Alcoholic Beverages is sold, if there has been any changes since the last license application;
- (3) Certification that the Applicant's establishment is not located closer than 500 feet from any church or school;
- (4) Evidence that the Applicant is or will be duly licensed by the State of Alabama;
- (5) Agreement by the Applicant to accept and abide by all conditions of the Tribal license; and

(6) Documentation of any violations which occurred during the past licensed year and corrective actions in place to remedy the situation.

(a) Disposition of Application

After review of renewal application, the Public Safety Department shall determine whether to grant or deny the application based on the following:

(1) Whether the Applicant is in current compliance with the requirements and conditions for licensing as set forth in § 40-3-4;

(2) Whether the Public Safety Department in its discretion determines that granting the renewal license is in the best interests of the Tribe; and

(3) The decision of the Public Safety Department may be appealed in accordance with Chapter V herein.

**§ 40-4-3 Permit**

(a) Application

An Applicant seeking to sell or serve Alcoholic Beverages for no more than three (3) days shall file an application for a permit with the Public Safety Department. The application shall be filed no later than thirty (30) days prior to the event. The permit application shall include, but not be limited to, the following information:

(1) The name and address of the Applicant;

(2) The description of the premises in which the Alcoholic Beverages are to be sold;

(3) Certification that the Applicant's establishment is not located closer than 500 feet from any church or school;

(4) Evidence that the Applicant is or will be duly licensed by the State of Alabama; and

(5) Agreement by the Applicant to accept and abide by all conditions of the Tribal license.

(b) Disposition of Application

After review of a permit application, the Public Safety Department, in its discretion, shall determine whether it is in the best interests of the Tribe to grant or deny the application. The decision of the Public Safety Department may be appealed in accordance with Chapter V herein.

## **CHAPTER V – APPEALS AND ENFORCEMENT**

### **§ 40-5-1 Civil Violations; Sanctions and Penalties**

(a) Any licensee or permittee who violates any of the provisions in this Ordinance or any rules and regulations promulgated under this Ordinance is subject to the imposition of civil penalties for such violation.

(b) To the fullest extent permitted by law, the Tribal Court shall have jurisdiction over any action brought by the Public Safety Department to enforce any and all penalties and/or sanctions provided for within this Ordinance.

(c) Based on the severity of the civil violation, the Public Safety Department shall determine what sanctions and/or penalties are warranted, including, but not limited to, the following:

- (1) Suspension, restriction, or revocation of a license or permit;
- (2) Issuance of a Notice of Violation and a corrective action plan;
- (3) Issuance of a civil fine not to exceed \$500 per violation;

(4) Initiation of an action in Tribal Court for appropriate injunctive relief if any alleged violation of the Ordinance or of the terms of any license or permit poses a threat to public health, safety or welfare; and

(5) Any other sanctions and/or penalties the Public Safety Department deems necessary to carry out the purposes of this Ordinance; however, the sanction and/or penalty may not violate any applicable laws.

(d) Any civil penalties issued under this Ordinance are in addition to, and do not supersede or limit any other remedies which may be available to the Tribe, including the filing of any action for injunctive relief in Tribal Court, or the filing of a criminal action in any court of competent jurisdiction.

#### **§ 40-5-2 Appeals and Hearings**

(a) Any action or decision taken by the Public Safety Department may be appealed by filing a written notice of appeal with the Tribal Chairman no later than fourteen (14) days after the appellant receives the written notice of the Public Safety Department's action or decision. The written notice of appeal shall include:

- (1) A copy of the final decision; and
- (2) The specific grounds for the appeal.

(b) All hearings shall be conducted by rules and regulations established in accordance with Tribal law.

(c) The appellant shall have the burden of proving by clear and convincing evidence that the Public Safety Department acted arbitrarily, unreasonably, or contrary to tribal law.

(d) The Tribal Council shall have thirty (30) days from the date of the hearing to issue a written decision to the Appellant.

- (e) The decision of the Tribal Council shall be final and not subject to further appeal.

**§ 40-5-3 Criminal Violations**

Violations of the Alcoholic Beverage Control Ordinance by any person subject to the criminal jurisdiction of the Tribe may be prosecuted under the Poarch Band of Creek Indians Criminal Code (Title 8).

**BE IT FURTHER ORDAINED** that the Tribal Council hereby adds the following provision to the Criminal Code as subsection (a) of § 8-7-1 and all other subsections in § 8-7-1 shall be renumbered accordingly:

(a) *Alcoholic Beverages.* Alcoholic Beverages shall mean any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquor, a part of which is spirituous, vinous, fermented or otherwise alcoholic, and all drinks or drinkable liquids, preparations or mixtures intended for beverage purposes, which contain one-half of one percent or more of alcohol by volume, and shall include liquor, beer, and wine, both fortified and table wine.

**BE IT FURTHER ORDAINED** that the Tribal Council hereby amends § 8-7-5 of the Criminal Code as follows:

**§ 8-7-5 Unlawful Possession of Alcoholic Beverages**

(a) A person commits the crime of unlawful possession of alcoholic beverages if:

(1) A person possess, sells, trades, transports, manufactures, or distributes any Alcoholic Beverage, except as provided in the Poarch Band of Creek Indians Alcoholic Beverage Control Ordinance; or



(2) A person purchases or buys Alcoholic Beverages from any person or entity does not have a license or permit as required by the Alcoholic Beverage Control Ordinance.

(b) Unlawful possession of alcoholic beverages except as provided in the Poarch Band of Creek Indians Alcoholic Beverage Control Ordinance is a Class B Misdemeanor.

**BE IT FURTHER ORDAINED** that the Tribal Council hereby enacts § 8-7-6 through § 8-7-8 of the Criminal Code as follows:

**§ 8-7-6       Furnishing Alcoholic Beverages to Minors**

(a) A person commits the crime of furnishing alcoholic beverages to minors if the person:

(1) Sells, delivers, furnishes, or gives away Alcoholic Beverages to any person under the age of 21, or permits any person under the age of 21 to drink, consume, or possess any Alcoholic Beverages; or

(2) Transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain any Alcoholic Beverage.

(b) Furnishing alcoholic beverages to minors is a Class C Misdemeanor.

**§ 8-7-7       Possession of Alcoholic Beverages by Minors**

(a) Notwithstanding the provisions of Section 8-7-5, a person commits the crime of possession of alcoholic beverages by minors if the person:

(1) Purchases, acquires, consumes, possesses, or transports any Alcoholic Beverages within the Indian Country under the jurisdiction of the Tribe while under the age of 21; or

(2) Knowingly uses or attempts to use a false, forged, or deceptive driver's license to obtain or attempt to obtain Alcoholic Beverages.

Provided, however, it shall not be unlawful for a person under the age of 21 who is an employee of an off-premises retail licensee to handle, transport, or sell any Alcoholic Beverage if the person is acting within the line and scope of his or her employment. There must be an adult employee of the licensee present at all times a licensed establishment is open for business.

(b) Unlawful possession of alcoholic beverages is a Class C Misdemeanor.

**§ 8-7-8 Fraudulent Submissions in Connection with a License or Permit**

(a) A person commits the crime of fraudulent submissions in connection with a license or permit if the person makes, provides, or swears to any false or fraudulent statement, contention, or documentation in connection with an application for a alcoholic beverage license or permit under the Poarch Band of Creek Indians Alcoholic Beverage Control Ordinance.

(b) Fraudulent submissions in connection with a license or permit shall be considered a Class C Misdemeanor.

(c)

(d)

(e) [FR Doc. 2012-16383 Filed 07/03/2012 at 8:45 am; Publication Date: 07/05/2012]